

## 2.9.9 Dark Fiber

2.9.9.1 Dark Fiber is inter-office optical fiber which has no lightwave or electronic transmission equipment terminated to such fiber to operationalize its transmission capabilities.

2.9.9.2 Subject to the provisions of Sections 2.9.9.7 and 2.9.9.8, BA shall offer its existing Dark Fiber to AT&T under an agreement to be mutually agreed to by the Parties.

2.9.9.3 BA shall provide a Single Point of Contact (SPOC) for negotiating all Dark Fiber requests.

2.9.9.4 Within the following time frames from the receipt of a written request from AT&T, BA shall provide AT&T with either copies of its records, or information extracted from its records, at BA's sole option, regarding available Dark Fiber ("Dark Fiber Records"): (i) for requests related to Dark Fiber within a central office serving area ("simple orders"), five business days; (ii) for all other requests ("complex orders"), fifteen business days; and (iii) notwithstanding paragraphs (i) and (ii) above, for voluminous requests and large projects, the Parties agree to negotiate in good faith a reasonable timeframe, if requested by BA. In the event that such Dark Fiber Records contain the names of other BA customers, prices or any other proprietary information, such information may be omitted; provided however, information concerning type, location and configuration shall be presumed to be non-proprietary information unless BA can demonstrate otherwise. AT&T acknowledges and agrees that BA makes no representation or warranty regarding the accuracy or completeness of such Dark Fiber Records and, accordingly, in ordering such Dark Fiber hereunder, AT&T assumes all risks of relying on such records. AT&T shall pay BA for the reasonable costs BA incurs in providing AT&T with Dark Fiber Records.

2.9.9.5 In the event AT&T decides to order Dark Fiber and requires verification of the information in the Dark Fiber Records and/or the technical characteristics of the Dark Fiber, AT&T shall send a written request to BA specifying in detail the information sought to be verified. BA shall respond to such request within a reasonable time, verifying such information or technical characteristics. AT&T shall pay BA for the reasonable costs BA incurs in verifying such information or technical characteristics, including any testing BA may perform. BA will use its best efforts to provide AT&T with accurate and timely verification information.

2.9.9.6 BA retains the right to establish the physical connection and testing with its own personnel and will interconnect its Dark Fiber with AT&T fiber only at existing splice points. AT&T has the right to connect Dark Fiber to its own electronic transmission equipment at existing termination points. AT&T equipment connected to Dark Fiber shall be installed in accordance with the terms of Part III hereof.

2.9.9.7 Where BA believes that a request by AT&T for specific Dark Fiber would (a) strand an unreasonable amount of its fiber, or (b) result in service disruption or degradation to other customers or carriers, BA shall have the right to seek relief from its obligations under this Section 2.9.9 by initiating dispute resolution under the expedited provisions of Section 16(C) of the General Terms and Conditions of this Agreement. The Parties agree to request that any such disputes be resolved by the Department itself.

2.9.9.8 If BA has reserved Dark fiber strands (e.g., they have been installed or allocated to serve a particular customer in the near future) requested by AT&T, BA shall, as soon as practicable, but in any event within thirty (30) business days after a request for such Dark Fiber strands, notify AT&T of such reservations and clearly document such reservations (omitting, however, all proprietary or

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confidential information, e.g., identity of customer, price, etc...). In such event, BA shall not be required to lease such Dark Fiber strands pursuant to this Section. Upon complaint by AT&T to verify that such reservation was appropriate under the standards established by the Arbitration Award, BA shall provide such documentation to the Department, together with the information omitted from the materials provided to AT&T pursuant to the preceding sentence; provided such omitted information is treated confidentially by the Department.

2.9.9.9 Intentionally omitted.

2.9.9.10 To the extent any local ordinance or private property permits or access permission is required for access to Dark Fiber, such as to open manhole covers, AT&T is responsible for obtaining such permits or permission. BA agrees to cooperate, at AT&T's expense, with AT&T in connection with obtaining all such necessary permits and approvals.

2.9.9.11 All rates for Dark Fiber shall be as set forth in Part IV hereof.